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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 233.

NAOMI PETTY, Administratrix of the Estate of
FAYE R. PETTY, Deceased,
Petitioner,

vs.

TENNESSEE-MISSOURI BRIDGE COMMISSION,
a Corporation,
Respondent.

PETITIONER'S BRIEF.

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PETITIONER'S BRIEF.

I. OPINIONS BELOW.

A. The opinion of the Court of Appeals for the Eighth Circuit will be found in 254 Federal (2nd) at page 857 (reprinted R. 16-26).

B. The opinion of the District Court is reported in 153 Federal Supplement at page 512 (reprinted R. 12).

II. JURISDICTION.

The jurisdiction of the Court is invoked under 28 U. S. Code 1254 (1). The judgment of the Court of Appeals was entered on May 1, 1958 (R. 27). Petition for Certiorari was filed July 30, 1958. Certiorari was granted October 13, 1958 (R. 27).

III. STATUTES INVOLVED.

(See Appendix for Texts.)

U. S. Constitution, Art. I, Sec. 8 (commerce clause).

U. S. Constitution, Art. I, Sec. 10, cl. 3.

U. S. Constitution, Art. III, Sec. 2.

U. S. Constitution, Amendment XI.

Federal Employers Liability Act, 45 U. S. Code 51 et seq.

Merchant Marine Act of 1920, Sec. 33 (Jones Act), Title 46, U. S. Code, Sec. 688.

Public Law 411 of the 81st Congress, Chap. 758, H. R. 6109.

28 U. S. Code 1254 (1).

28 U. S. Code 1331.

28 U. S. Code 1333 (1).

Chapters 167 and 168, Public Acts of 1949 of the Tennessee Legislature.

Revised Statutes of Missouri, 1949, Sections 234.360 to 234.420.

IV. QUESTIONS PRESENTED.

A. Whether, as a matter of law, a bi-state commission "a body corporate and politic" formed by concurrent action of the legislatures of the two States and the consent of Congress, may avoid liability under the Jones Act (46 U. S. Code 688) for the wrongful death of a member of the crew of its ferry on the theory of sovereign immunity, taking into account:

(1) that among the powers bestowed upon the commission was the power "to contract, to sue and be sued",

(2) that the consent statute of Congress imposes the conditions, among others, that the power and jurisdiction of the various branches of the Federal Government over navigable waters and interstate commerce shall not be impaired,

(3) that the projected activities of the commission included operation of ferries over navigable waters of the United States in interstate commerce and

(4) that the commission did in fact enter into and engage in such activities, in the course of which the casualty occurred.

B. Whether the Courts of the United States are precluded from exercising jurisdiction over a civil action under the Jones Act, 46 U. S. Code 688, in such a situation by the Eleventh Amendment of the United States Constitution, the plaintiff being a citizen of one of the States which are parties to the compact.

V. STATEMENT.

A portion of the opinion of the Court of Appeals (R. 16-18) states the case. This statement of the Court of Appeals is accepted with the several amendments which are inserted parenthetically:

“Plaintiff-administratrix has appealed from final order dismissing her complaint for damages for wrongful death of her decedent. Plaintiff, as administratrix of the estate of her deceased husband, in her complaint (R. 2) asserted that her deceased husband, while employed as a seaman upon a ferry boat operated by the defendant (as a common carrier in interstate commerce) across the Mississippi River between Tiptonville, Tennessee, and Portageville, Missouri, met his death when trapped in the pilot house of the ferry boat as it sank, as the result of a collision with another boat; that her husband's death was caused by the negligence of the defendant; and that recovery of damages is authorized by the Jones Act, 46 U. S. C. A., § 688.

Defendant filed a motion to dismiss (R. 6) based upon the following grounds:

(1)—Because this action is essentially a suit against the States of Tennessee and Missouri, which cannot be maintained in the Courts of the United States, or any other Courts.

(2)—Because this action is in substance and effect one against the States of Tennessee and Missouri, without consent, over which neither the judicial power of the United States or the States of Tennessee or Missouri extends.

(3)—Because this is a suit against an agency created by the sovereign States of Tennessee and Mis-

souri, approved by an Act of Congress, and suits of this class are not permitted by the Constitution and Laws of the States of Tennessee and Missouri, or either of them, and this defendant is immune and not liable in damages in suits of this class.

.(4)—Because this Court has no jurisdiction over the person of this defendant, or the subject matter of this action.”

The District Court in its decision (R. 12) states that the motion may be treated as a motion for summary judgment.

The trial court sustained the defendant's motion and dismissed the complaint upon the basis that the suit against the defendant was in effect a suit against the States of Tennessee and Missouri, that the defense of sovereign immunity was available to said States, and that such defense had not been waived (R. 12). The appeal challenges the validity of this determination.

Plaintiff in her brief states that defendant's claim of sovereign immunity must be denied for each of the following reasons: (1) defendant is a separate entity from the States of Tennessee and Missouri; (2) the States have waived sovereign immunity; (3) the States, by empowering the Commission to engage in maritime commerce and interstate commerce, “subordinated themselves and it to the Federal Government's power to regulate interstate commerce and its power over matters maritime, and all laws enacted to implement these powers, including the Jones Act.”

The pertinent facts relative to the creation and operation of the Bridge Commission may be summarized. The Bridge Commission is a “body corporate and politic” (Appendix, p. A. 4). The Commission was created in 1949 pur-

suant to the General Bridge Act of 1946, 33 U. S. C. A., §§ 525-533, by joint action of the legislatures of Tennessee and Missouri (Chapters 167 and 168 of the Public Acts of 1949 of the Tennessee Legislature, and Revised Statutes of Missouri, Sections 234.360-234.420) and by special act of Congress (Public Law 441, 81st Congress, Chapter 758). Congressional approval was required by Article I, Section 10, Clause 3 of the Constitution of the United States, which provides, "No State shall, without the Consent of Congress * * * enter into any Agreement or Compact with another State * * *." (The Act of Congress approving the compact as required by the Constitution, was one of **provisional** consent and among its provisions were that "nothing herein contained shall be construed to affect, impair, or diminish any right, power or jurisdiction of the United States or of any Court, department, board, bureau, officer or official of the United States over or in regard to any navigable waters or any commerce between the States or with foreign countries * * * or any other person, matter or thing forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof * * *") (Appendix, pp. A. 3-4). The terms of the interstate compact are set out in full in each of the state acts and in the congressional act of approval. The main function of the Commission is to plan, construct, maintain, and operate an interstate bridge near Caruthersville, Missouri, with authority granted to purchase and operate ferries across the river within 25 miles of the bridge site." (Among the powers conferred upon the Commission by the compact is: Article I, Sec. 3, "To contract, to sue and be sued in its own name; to purchase or otherwise acquire, hold and dispose of real and personal property.") (Appendix, p. A. 5).

The Court of Appeals affirmed the judgment of the District Court with the following words:

"We conclude that the trial court, by reason of the provisions of the Constitution, and particularly the Eleventh Amendment, had no jurisdiction of this suit, brought in effect against the States of Tennessee and Missouri. The trial court properly dismissed the action for want of jurisdiction (R. 26).

to

VI. ARGUMENT.

A. Is This a Suit Against the States Themselves?

The petitioner submits that the instant action is not one against the States of Tennessee and Missouri.

If this contention is sound, the Eleventh Amendment to the Constitution is not involved and the problem becomes one of immunity of a public corporation and not that of the States themselves.

The question of whether a suit to which the State is not a party to the record is, in essence, a suit against the State, has frequently been passed upon by this Court, but never in the form in which it is here presented. Previous decisions of this Court have usually dealt with suits against state boards or departments and/or individual state officers or purported officers. **Ford Motor Company v. Department of Treasury of the State of Indiana et al.**, 323 U. S. 459, 464-7, 65 S. Ct. 347, is a recent decision of this Court reviewing earlier decisions. **Ford** involved litigation against a state department and individual state officers. This Court held that since the State of Indiana was called upon to respond financially to the judgment sought, the suit was in essence against the State. On page 464 of the opinion, this Court, speaking through Justice Reed said:

“ * * * We have previously held that the nature of a suit as one against the state is to be determined by the essential nature and effect of the proceeding. **Ex parte Ayers**, 123 U. S. 433, 490, 499, 8 S. Ct. 164, 174; 175, 31 L. Ed. 216; **Ex parte State of New York**, 256 U. S. 496, 500, 41 S. Ct. 588, 590, 65 L. Ed. 1057; **Worcester County Trust Company v. Riley**, 302 U. S. 292, 296, 298, 58 S. Ct. 185, 186, 187, 82 L. Ed. 268. And

when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants. **Smith v. Reeves**, supra; **Great Northern Life Insurance Company v. Read**, supra. We are of the opinion, therefore, that the present proceeding was brought in reliance on Section 64-2614 (a) and is a suit against the state."

In **re State of New York et al.** (1920), 256 U. S. 490, 41 S. Ct. 588, relied upon heavily by the Court below, another case which dealt with a suit against state officers, also recognized the significance of the liability of the state to make satisfaction of any judgment recovered.

In the instant case the opinion of the District Judge (R. 12-13) states that a judgment against the Commission "would operate to affect directly the two sovereigns . . . and if a judgment were rendered against the defendant in this case, the two states and the Federal Government would be responsible. The operation of the defendant is governmental in nature." The Court of Appeals' opinion does not go this far and indeed there is nothing elsewhere in the record to warrant such a conclusion. The latter opinion (R. 20) states:

"It is apparent that a judgment against the Commission and a seizure of the ferry would adversely affect the participating states in the performance of their duty of providing a means of crossing the river", which of course, is something quite different from a direct pecuniary liability on the part of the states and the Federal Government to satisfy a judgment.

The record is barren as respects any pecuniary responsibility of the states to satisfy a judgment, other than the

gratuitous remarks of the District Judge. The compact nowhere provides for payment by the states of judgments against the Commission. The states to date have not seen fit to enter this litigation, even by way of providing counsel from their respective Attorney General departments. Neither state has participated even to the extent of seeking to become an amicus curiae.

Pecuniary responsibility for the judgment is indeed an important element of a finding that a state is a real party in interest in litigation and it is submitted that in the instant case this element is entirely lacking.

The record provides no basis for concluding that the instant proceeding is in essence a suit against the States of Missouri and Tennessee or either of them.

If the instant case is not a suit against the states themselves, it would seem to be within the rule of this Court in **Workman v. Mayor of New York** (1900), 179 U. S. 552, 557-60, 21 S. Ct. 212, which held that a public corporate body (the City of New York) which had "general capacity to stand in judgment", being "subject to suit and amenable to process" was liable for the commission of maritime torts, notwithstanding a local rule of law extending sovereign immunity from tort actions to municipal corporation for torts committed while performing a governmental function.

In the case at bar the Commission has "general capacity to stand in judgment", being "subject to suit and amenable to process" (Appendix, p. A. 5), and it has committed a maritime tort (R. 3, par. VI). The instant case is indeed much stronger than **Workman**. The vessel there was a fire boat and the "governmental" character of its operation was clear. Here we have a ferry, a common carrier charging fares.

In view of the foregoing, and, especially, under the authority of **Workman**, the Commission has no sovereign immunity from this action.

B. Express Consent to Be Sued.

The subsequent decision in **In re State of New York** has cast some doubt on the soundness of the **Workman** decision. The two cases are distinguishable on their facts, as **Workman** involved the City of New York, and not the state per se. **Workman** seems the sounder of the two decisions, for reasons which will be developed later in connection with the question of subordination by states to Federal authority.

It is not necessary, however, to rely upon **Workman** to sustain petitioner's right to sue the respondent, as here we are dealing with an interstate compact, and the conditions imposed by Congress in approving the compact are involved.

The language of the compact, Article I, Section 3, "to contract, to sue and be sued" (Appendix, p. A. 5) seems clear and unambiguous. Local rules of narrow construction, however, of the courts of some states, including both Tennessee and Missouri, have given a different meaning to this language as applied to public corporate bodies; to-wit, that suit is permitted in **contract**, but not in **tort**. This was the reasoning of the District Judge in sustaining the motion to dismiss, and he relied upon a decision applying the local rule of Missouri.

Long ago, however, this Court decided in **Marlatt's Lessee v. Silk et al.**, 36 U. S. 1, 20, 11 Peters 20, 9 L. Ed. 609, 617, that construction of an interstate compact is a matter of international law, and that no reference should be made to the decisions of the Courts of the States which

are parties respecting their own local rules of construction.

In the instant case not only the intentions of the States, but that of Congress, must be considered. As a condition to approval of the compact, Congress provided explicitly "that nothing contained herein shall be construed to affect, impair or diminish any right, power or jurisdiction of the United States or of any Court, department, board, bureau, officer or official of the United States over or in regard to any navigable waters or any commerce between the states or with foreign countries . . . or any other person, matter or thing forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof" (Appendix, pp. A. 3-4).

In the light of this language, how can it be contended that Tennessee and Missouri have not consented that the Commission—formed pursuant thereto—be subject to suit under laws directly implementing the commerce power and the power over matters maritime of the United States Government?

The Jones Act is such a law, deriving authority from both powers. **O'Donnell v. Great Lakes Dredge and Dock Company**, 318 U. S. 36, 39, 40, 87 L. Ed. 596, 63 S. Ct. 488, 90.

It is submitted that this language of Congress quoted above cannot be reconciled with the narrow interpretation of the words "to sue and be sued" advanced by respondent and upheld by the Courts below. These words should be construed by this Court to mean what they say, which is the only construction consistent with the validity of the compact itself.

This conclusion also disposes of the problem of the Eleventh Amendment to the United States Constitution.

raised for the first time by the Court of Appeals (R. 23 et seq.). It is clear that the bar of the Eleventh Amendment may be waived, **Ford Motor Company v. Department of Treasury of Indiana**, 323 U. S. 459, 464-467, 65 S. Ct. 347, and authorities there cited. The acceptance of the conditions imposed by Congress in the consent statute is the clearest kind of waiver of the privilege of the Eleventh Amendment, as well as of the substantive defense of sovereign immunity for the Commission and the States of Tennessee and Missouri themselves.

C. Waiver of Immunity by Conduct.

Even though in a particular case the Court determines that the suit is in effect one against a State, and that the State has not intentionally permitted the particular action involved, it still remains to be determined whether the State has by its conduct waived its sovereign immunity and the procedural protection afforded that immunity by the Eleventh Amendment.

In the instant case the respondent Commission, even if it be regarded as the States of Tennessee and Missouri themselves, can claim no immunity from this action because the States have, in two respects, by their conduct, waived their sovereign immunity, and subjected themselves to the powers of the Federal Government over interstate commerce and matters maritime:

1. Even if it be conceded that the legislatures of Tennessee and Missouri in seeking to establish the Commission did not intend that it should be suable in tort actions, in the light of the conditions imposed by Congress in the consent statute referred to and quoted heretofore—and without which consent the Commission could have no legal existence—the States, in setting up the Commission, have subjected themselves and it to the powers of the Federal

Government over interstate commerce and navigable waters and all laws enacted thereunder, including the Jones Act.

The consent statute speaks for itself (Appendix, pp. A. 3, 4). If it be contended that consent of Congress was subsequent in point of time to the action of the legislatures of Tennessee and Missouri, and that the States did not anticipate the terms and conditions of Congressional consent, they nevertheless proceeded to set up the Commission, permitted it to accept funds from the United States Government, float bonds, etc. (R. 8-10), all of which would have been illegal and null and void under the Constitution except on the terms and conditions laid down by Congress. Their offspring cannot be heard to deny this waiver of sovereign immunity in direct contradiction of the conditions imposed by Congress.

2. Completely aside from the act of approval of Congress and the conditions it imposes, the States of Tennessee and Missouri, by placing the Commission in business as (a) a common carrier in interstate commerce and (b) in actual operation upon navigable waters, have subjected themselves and it to the power of the Federal Government over these areas of activity and the laws of Congress regulating activities in these areas.

In **U. S. v. California** (1936), 297 U. S. 175, 80 L. Ed. 567, 56 S. Ct. 421, the State of California owned and operated a terminal railroad which serviced dock areas in San Francisco harbor. The revenues obtained from charges for its services were used for harbor improvement and thus, in the overall sense, the railroad was a non-profit enterprise, much as in the instant case, where the revenues from the ferry were to be used for paying the interest upon and retiring bonds and for construction of the proposed bridge across the Mississippi River.

The proceeding in the **California** case was an action by the United States to enforce the penalty provisions of the

Safety Appliance Act, 45 U. S. Code, 1 et seq. California pleaded sovereign immunity from such a proceeding. Upon a finding that the railroad was engaged in interstate commerce, this Court held that by **engaging in such activity** California had subordinated itself to the commerce power and statutes enacted thereunder including the Safety Appliance Act.

This Court said (p. 185 of 297 U. S. Reports):

“California, by engaging in interstate commerce by rail, has subjected itself to the commerce power, and is liable for a violation of the Safety Appliance Act, as are other carriers, unless the statute is to be deemed inapplicable to state-owned railroads because it does not specifically mention them. The Federal Safety Appliance Act is remedial, to protect employees and the public from injury because of defective railway appliances, **Swinson v. Chicago, St. Paul, M. & O. Ry. Co.**, 294 U. S. 529, 55 S. Ct. 517, 79 L. Ed. 1041, 96 A. L. R. 1136; **Fairport P. & E. R. Co. v. Meredith**, 292 U. S. 589, 594, 54 S. Ct. 826, 78 L. Ed. 1446; **Johnson v. Southern Pacific Co.**, 196 U. S. 1, 17, 25 S. Ct. 158, 49 L. Ed. 363, and to safeguard interstate commerce itself from obstruction and injury due to defective appliances upon locomotives and cars used on the highways of interstate commerce, even though their individual use is wholly interstate. **Southern Ry. Co. v. United States**, 222 U. S. 20, 32, S. Ct. 2, 56 L. Ed. 72; **Moore v. Chesapeake & Ohio Ry. Co.**, 291 U. S. 205, 214, 54 S. Ct. 402, 78 L. Ed. 755. The danger to be apprehended is as great and commerce may be equally impeded whether the defective appliance is used on a railroad which is state-owned or privately-owned. No convincing reason is advanced why interstate commerce and persons and property concerned in it, should not receive the protection of the act whenever a state, as well as a privately-owned carrier, brings itself

within the sweep of the statute, or why its all-embracing language should not be deemed to afford that protection."

This Court (l. c. 183-4) as in the **Workman** case, rejected the distinction sought to be made between "governmental" and proprietary capacities. This distinction figures largely in the opinion of the Court of Appeals (R. 19, 25).

In a subsequent action at law in the California State court by an injured employee of the same railroad under the Federal Employers' Liability Act, 45 U. S. Code 51 et seq. (Appendix, pp. A. 1, 2), companion legislation to the Safety Appliance Act, the appellate court held, specifically following **U. S. v. California**, that California had surrendered its sovereign immunity from suit by a private citizen under the Federal Employers' Liability Act, having subordinated itself to that law as well as the Safety Appliance Act. **Maurice v. State** (1941), 43 Cal. App. 270, 110 P. 2nd 706.

The same rule has obtained with respect to the Railway Labor Act, 45 U. S. Code 151 et seq., **New Orleans Public Belt Railroad Commission v. Ward**, C. A. 5 (1952), 195 F. 2nd 829; **Taylor v. Fee**, C. A. 9 (1956), 233 F. 2nd 251, 256. The latter case cites with approval **Maurice v. State**, supra.

The Jones Act, which is involved in the instant case, as has been pointed out, derives from both the commerce power and the power over matters maritime, Article III, Section 2, Constitution of the United States. **O'Donnell v. Great Lakes Dredge and Dock Company**, supra. It is "remedial legislation," designed to "protect employees" from, and compensate them in the event of, injuries, and is construed liberally in favor of injured seamen. **Garrett v. Moore McCormack**, 317 U. S. 239, 63 S. Ct. 246; **O'Donnell v. Great Lakes Dredge & Dock Company**, supra; **So-**

cony-Vacuum Company v. Smith, 305 U. S. 424, 59 S. Ct. 252; **Panama Railroad Company v. Johnson**, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748.

The Jones Act is the maritime equivalent of the Federal Employers' Liability Act, 45 U. S. Code 51 et seq., all applicable provisions of which are incorporated by reference (Appendix, pp. A. 2, 3).

The Court of Appeals approached the Jones Act as follows (R. 25):

"We find nothing in the Jones Act which shows any congressional intention to make its provisions applicable when either the state or Federal Government is the employer."

When this Court dealt with the analogous problem in **California** it said (p. 185 of 297 U. S. Reports):

"No convincing reason is advanced why interstate commerce and persons and property concerned in it should not receive the protection of the Act when a state, as well as a privately owned carrier brings itself within the sweep of the statute, or why its all embracing language should not be deemed to afford that protection."

The rule of **U. S. v. California** should be applied here.

It is thus demonstrated that by their conduct the States of Tennessee and Missouri and their offspring, the Commission, have doubly subjected themselves to the power of the United States Government over interstate commerce and matters maritime and all laws enacted thereunder, including the Jones Act.

As has been previously pointed out, the privilege and protection afforded States by the Eleventh Amendment

may be waived. In the light of the waiver by conduct demonstrated above, no immunity exists as respects this action, even if it be regarded as one, in essence, against the States of Tennessee and Missouri themselves.

VII. CONCLUSION.

For the foregoing reasons, and with particular emphasis on (1) the acceptance of or submission to the conditions imposed by the consent statute of Congress and (2) the actual engaging in interstate commerce upon navigable waters of the United States, the States of Tennessee and Missouri should be held to have waived for themselves and the respondent Commission any immunity from liability under the Jones Act in general and in particular the privilege of the Eleventh Amendment as respects this proceeding in the Courts of the United States.

The judgment of the Court of Appeals for the Eighth Circuit should be reversed and the cause should be remanded to the District Court for the Eastern District of Missouri, Southeastern Division.

Respectfully submitted,

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APPENDIX.

U. S. Constitution, Article I, Section 8:

The Congress shall have Power * * * to regulate Commerce with foreign nations and among the several States, and with the Indian Tribes.

U. S. Constitution, Article I, Section 10, cl. 3:

No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State, or with a foreign Power.

U. S. Constitution, Article III, Section 2:

The judicial Power shall extend * * * to all cases of admiralty and maritime jurisdiction.

U. S. Constitution, Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Federal Employers Liability Act, 45 U. S. Code 51 et seq.

Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations,

shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then to the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter. April 22, 1908, c. 149, § 1, 35 Stat. 65; August 11, 1939, c. 658, § 1, 53 Stat. 1404.

Merchant Marine Act of 1920, Section 33 (Jones Act), Title 46, U. S. Code, Section 688:

Recovery for injury to or death of seaman.

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman

may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. March 4, 1915, c. 153, Sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007.

Public Law 411 of the 81st Congress, Chapter 758, H. R. 6109.

**Tennessee-Missouri Bridge Commission Compact—
Consent, Chapter 758—Public Law 411.**

(An act granting the consent of Congress to a compact or agreement between the State of Tennessee and the State of Missouri concerning a Tennessee-Missouri Bridge Commission, and for other purposes.)

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That:

The consent of Congress is hereby given to the compact or agreement set forth below, and to each and every term and provision thereof; Provided, That any obligations issued and outstanding, including the income derived therefrom, under the terms of a compact or agreement, and any amendments thereto, shall be subject to the tax laws of the United States; And Provided Further, That nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any Court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad, highway,

pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof: And Provided Further, That after the costs of the bridge have been amortized, such bridge shall thereafter be maintained and operated free of tolls:—

Compact between Tennessee and Missouri—powers and duties of Tennessee-Missouri Bridge Commission.

Within sixty days after this act becomes effective, the governor, by and with the advice and consent of the senate, shall appoint three commissioners to enter into a compact on behalf of the state of Missouri with the state of Tennessee. If the senate is not in session at the time for making such appointments, the governor shall make temporary appointments as in the case of a vacancy. Any two of the commissioners so appointed together with the attorney general of the state of Missouri may act to enter into the following compact:

**Compact Between Tennessee and Missouri Creating
a Tennessee-Missouri Bridge Commission.**

Article I.

There is hereby created a Tennessee-Missouri Bridge Commission (herein referred to as the commission) which shall be a body corporate and politic and which shall have the following powers and duties:

1. To plan, construct, maintain and operate a bridge and approaches thereto across the Mississippi river at or near Caruthersville, Missouri, at a point deemed by the commission as most suitable to the interests of the citizens of the states of Tennessee and Missouri in accordance with the provisions of an act of the Seventy-ninth Congress,

second session, of the United States, entitled "The General Bridge Act of 1946", 33 U. S. C. A. 525-533;

2. To purchase, maintain and, in its discretion, to operate all or any ferries across the Mississippi river within twenty-five miles of the site selected for the bridge;

3. To contract, to sue and be sued in its own name; to purchase or otherwise acquire, hold and dispose of real and personal property;

4. To acquire by proper condemnation proceedings such real property as may be necessary for the construction and operation of the bridge and the approaches thereto;

5. To issue bonds on the security of the revenues derived from the operation of the bridge and ferries for the payment of the cost of the bridge, its approaches, ferry or ferries, and the necessary lands, easements and appurtenances thereto including interest during construction and all necessary engineering, legal, architectural, traffic surveying, and other necessary expenses. Such bonds shall be the negotiable bonds of the commission, the income of which shall be tax-free. The principal and interest of the bonds, and any premiums to be paid for their retirement before maturity, shall be paid solely from the revenues derived from the bridge and ferries;

6. To establish and charge tolls for transit over such bridge and ferries in accordance with the provisions of this compact;

7. To perform all other necessary and incidental functions.

Article II.

The rates of tolls to be charged for transit over such bridge and ferries shall be so adjusted as to provide a

fund sufficient to pay for the reasonable cost of maintenance, repairs and operation (including the approaches to the bridge) under economical management, and also to provide a sinking fund sufficient to pay the principal and interest of the outstanding bonds. All tolls and other revenues derived from facilities of the commission are hereby pledged to such uses.

Article III.

The commission shall keep an accurate record of the cost of the bridge and of other expenses and of the daily revenues collected and shall report annually to the governor of each state setting forth in detail the operations and transactions conducted by it pursuant to this agreement and any legislation thereunder.

Article IV.

When the bonds have been retired, the part of the bridge within the state of Tennessee shall be conveyed to the state of Tennessee, and that part within the state of Missouri to the state of Missouri, and the high contracting parties to this compact do hereby agree that thereafter the bridge shall be free of tolls and shall be properly maintained, operated and repaired by the two states as may be agreed upon.

Article V.

The commission shall consist of ten members, five of whom shall be qualified electors of the state of Tennessee and shall reside in Dyer County, or counties adjacent thereto, Tennessee, and five of whom shall be qualified electors of the state of Missouri and shall reside in Pemiscot County, or counties adjacent thereto, Missouri. The Tennessee members are to be chosen by the state of Ten-

nessee, and the Missouri members by the state of Missouri in the manner and for the terms fixed by the legislature of each state, except as herein provided.

Article VI.

1. The commission shall elect from its number a chairman and a vice-chairman and may appoint such officers and employees as it may require for the performance of its duties and shall fix and determine their qualifications and duties.

2. Until otherwise determined by the legislatures of the two states no action of the commission shall be binding unless taken at a meeting at which at least three members from each state are present and unless a majority of the members from each state present at such meeting shall vote in favor thereof.

Each state reserves the right hereafter to provide by law for the exercise of the veto power by the governor thereof over any action of any commissioner appointed therefrom.

Article VII.

The commission is authorized and directed to proceed with the planning and construction of the bridge and the approaches thereto as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers, not inconsistent with the constitution or the laws of the United States or of either state, to effect the same, except the power to assess or levy taxes.

Article VIII.

In witness thereof, we have hereunto set our hands and seals under authority vested in us by law.

(Signed)

Commissioners—appointed and qualifications.

Within ninety days after this law becomes effective the governor shall, by and with the advice and consent of the Senate, appoint five commissioners of the Tennessee-Missouri Bridge Commission created by compact between the states of Missouri and Tennessee. If the senate is not in session at the time for making any appointment, the governor shall make a temporary appointment as in the case of a vacancy. All commissioners so appointed shall be qualified voters of the state of Missouri and shall reside within the county of Pemiscot, Missouri, or counties adjacent thereto. (L. 1949, p. 625 c/g 1).

Terms of commissioners.

Of the commissioners first appointed one shall be appointed to serve for a term of one year, one for two years, one for three years, one for four years and one for five years. At the expiration of the term of each commissioner and of each succeeding commissioner, the governor shall, by and with the advice and consent of the senate, appoint a successor who shall hold office for a term of five years. Each commissioner shall hold office until his successor has been appointed and qualified (L. 1949, p. 625, c/g 2).

A.

Commission vacancies, how filled.

Vacancies occurring in the office of any commissioner shall be filled by appointment by the governor, by and with the advice and consent of the senate, for the unexpired term. In any case of vacancy, while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office.

Commissioners to receive expenses only.

The commissioners shall serve without compensation but shall be entitled to be reimbursed for the necessary expenses incurred in the performance of their duties.

Commissioners, powers and duties.

The commissioners shall have the powers and duties and be subject to the limitations provided for in the compact entered into between the two states, and together with five commissioners from the State of Tennessee shall form the Tennessee-Missouri Bridge Commission.

Commission to be dissolved, when.

Upon the retirement of all bonds, including the payment of interest and other costs, and upon the conveyance of the bridge to the states of Missouri and Tennessee, the commission shall be dissolved and all its rights, powers, and duties under this act and under the compact entered into between the states of Missouri and Tennessee, shall be terminated.

28 U. S. Code 1254 (1):

Courts of appeals; certiorari; appeal, certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

1 By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U. S. Code 1331:

Federal question; amount in controversy.

The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

28 U. S. Code 1333 (1):

Admiralty, maritime and prize cases.

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to the libelant or petitioner in every case any other remedy to which he is otherwise entitled.